Reserve

P 36

App. F. IX-4

1929.
(Jan-Dec)

File No. 201-29

Serial Nos. 1-5

Previous References
Jud 42-28-1-41

Later References
Law 86-31-1-6; 11-25

General and Revenue Secretariat.

Serial Nos. 5

Part B for November 1930

SUBJECT

Filing of suits for the recovery of certain properties alienated by the late Swamigals of the Sri Avadi Mutt.

Filed

Action taken on receipt of fresh plaints for approval

G. R. S. APP F.III—1] 1929.

GENERAL AND REVENUE SECRETARIAT.

(Muzrai)

NOTES.

File No. 209/1929

FILE HEADING.

Redemption of certain properties alienated by the late Swamiyar of Sri Perumbudur Math.

FROM

The D.C.

No. C.1226 Dated 7.1.30 Received

Diary No.	Enclos.	Spare copies	Serial No.
1070	12	--	1

BRIEF ABSTRACT OF LETTER.

Reports that the parties who agreed to a compromise have proved refractory, & that it is necessary to file suits, and Requests instructions before the 15th inst. On a consultation with A.R., in the matter of filing suits.

NOTES AND ORDERS.

Jud. Secy's note on the Communication

" Immediate. A.R. may be kindly requested to offer his opinion - the whole file should be sent to him as

" Muz. file containing G.O. of

submitted

NOTES—First Sheet.

8/1/29

3235/29
P.W.D.

App. F. III—2]

General and Revenue Secretariat. | File No. 2057 of 1929.

Serial No.

18th May 1929 Conveying orders in the matter of the redemption of these properties by private negotiation, is put up & may be sent to A.R. for submission by Revd
A.R. 8/5/30 8/5/30

Five suits are proposed to be filed, and drafts plaints prepared by Mr. G. R. Srinivasaraja, Advocate of Bellary are sent for the opinion of A.R.

It is said in the Dist. Coll's letter of the 7th January 1930 (P.W.D.) that the S.D.O's note (Hajj A) gives the necessary details about the properties & the incumbrances. But on a comparison of the Schedules of the drafts plaints and this note, it is seen that it is only in suits 1 and 4 against Srinivasaraya and P. Ramiah respectively, that some details are furnished. As regards the other three suits, no information is available as to how the alienations can be challenged as being void beyond the life time of the Mathadhipathi. Under the Privy Council Ruling in Balusami Iyer's case (44 Madras)

Hajj A.

NOTE—Contn. sheet.

WD 066—GPB—30,000—26-7-29

General and Revenue Secretariat. File No. of 192 .

Serial No.

It is only such alienations of a Mathadipati that are made for no "legal necessity" that can be avoided by his Successor — It is therefore essential to know under what circumstances the mortgages and sale in question were made by the late Swami. The recitals in the documents executed have to be carefully examined and investigation has to be made what other evidence is available to prove or disprove the recitals of legal necessity. Though the burden of proving such necessity is on the defendant alienee, he can easily shift that burden by making out a prima facie case in support of the recitals, especially when direct evidence on the fact of necessity cannot be procured on account of lapse of time, in cases of alienations made more than twenty years ago.

In the first proposed suit against Srinivasa Ayyar and Ramakrishnadas, S Do's note (Hg M) shows that the lands were mortgaged on 20.4.1916 for in consideration of the settlement of a decree for Rs 2000/-. It is not clear how in the face of this, the draft plaint in para 7 challenges this deed as being nominal and void on account of want of consideration.

Held

Except in the 5th Suit against

NOTE—Contn. sheet.

General and Revenue Secretariat. File No. 7.6 of 1924.

Serial No.

Ruche Subbia in all the remaining four, the alienations that are sought to be avoided are mortgages. The relief prayed is one for possession free from incumbrances. It is perhaps better if an alternative relief for redemption of the mortgages is also asked for.

On account of the meagre information furnished by the Rev Com^r, it is difficult to pronounce any opinion as regards the advisability of filing these Suits. It might perhaps be well worth, even if the matter is thereby delayed a little longer, to get a report from H.C. furnishing all the information required under rule 78 of the Rules for the legal affairs of Government, before the question of institution of these Suits is decided.

DMF 11.1.30

& As already pointed out in the linked file on 23.4.29 the question of legal necessity is of great importance on the decision of which the cases will depend.

Certified copies of the documents have not been sent, and it is not clear how the allegations in the 1st Suit attempts to go behind the decree referred to therein.

Unless all the information required

NOTE—Contn. sheet.

WD 066—GPB—80,000—26-7-29

33 P

1020

App. F. III—2]

General and Revenue Secretariat. File No. 204 of 1923

Serial No.

1 8937 Secd Listed

Where R. 78 is furnished, I am afraid it is not possible to give legal opinion

To keep with Comps

11 Address N. C for furnishing the

13/1

15/1/30

15/1

1— [illegible] for consideration

16/1

13 Issue

16/1

2 To

2nd Mtg Comm

1428-J 16-1-30

Calls for certain available documents in the matter

Sec A

24/1/30

NOTE—Contn. sheet.

WD 066—GPB—30,000—26-7-29

General and Revenue Secretariat | File No. 201 of 192 3.

Serial No.

3 Letter No 1226/24 25 dated the 20th/21st July 1930 from the Judge and Chairman in regard furnishing further information on the points detailed in the memo (of this office) and obtaining orders in the matter of filing certain suits for the recovery of certain properties alienated by the late Maharaja of the Sri Ayyan Kovil.

14 Submitted for orders with reference to the orders of the Legal Remembrancer at page 10 of the note book supra

C.G
25/7/30

(Illegible)

28/7

15 L.R. with Compliments.

23/7

28/7

11071/25

94/25.3.30

16 The requirements of Rules 66 & 78 of the Rules for the Conduct of Legal affairs of 19.3.24 may be kindly attended to as stated herein.

D. 28/7

28/7

D/s. May 4 28/3.

12509/28/3

Note—Contn. Sheet

WD 066—GPB—30,000—26-7-29

General and Revenue Secretariat | File No. | of 192 7

Serial No.

1) A copy of the rules for the examination of the Legal Practitioners of Travancore is sent herewith for information, all the information required therein to be furnished to the Legal Remembrancer in rules 66 and 18 of the Rules are not available in the records before Government. As suggested in letter No. A2 C16, 15/28-29, dated the 16th July 1930 of the Dy Commr, Kolar District, to the Mysore Commr, in Mysore, Mr K. G. Butt who is now on Asst Commissioner, may hereafter be required to meet the Legal Remembrancer on any date and have connection to the ballot and furnish any information about the case, that might be required by the Legal Remembrancer. Yes by Government

Flag N

Note—Contn. Sheet

WD 066—GPB—80 000—26-7-29

General and Revenue Secretariat | File No. 201 of 192

Serial No.

12675/24

[illegible]

24/4 A

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

To

The Mag Pondr

No 20439 S-4-30

With reference to [illegible]

[illegible]

Secy A/c 17/4/30

17/4

Note—Contn. Sheet

WD 066—GPB—80 000—26-7-29

General and Revenue Secretariat | File No. of 192

Serial No.

Letter No: 1226/24-3 dated 21.5.30
From the Chief Comm.

Forwards a copy of his W/S letter containing the required information & requests that the opinion of the L.R may be obtained & further instructions be issued at the early date.

Submd for orders with reference to paras 10 & 11 of the notes

Sd/- 22/5

24 To L.R. with Compliments

Sd/- 23/5

25 I have carefully gone through the draft plaints and the documents sent. The plaints appear to require considerable revision before they can be said to be in order. Beyond making general allegations about the character & conduct of the previous Swami, it is not shown how the mortgages created by him are not ~~binding.~~ for legal necessity. The words "ಅಜ್ಞಾನ", "ದುರ್ವರ್ತನೆ" ಮುಂತಾದ ಪದಗಳು" etc appear to be used very lightly, without a correct appreciation

Note—Contn. Sheet

WD 066—GPB—30,000—26-7-29

Serial No.

of the difficulties in establishing such allegations especially in view of the meagre evidence available for the purpose -

26 Considering each plaint by itself, the facts are as follows —

Suit No 1

('A') The mortgage that is sought to be set aside is that created by a deed of 20th april 1916 in favour of Ramiah and Shambhogue Krishnaraotarao and assigned by them in favour of the proposed defendants 1 and 2 by means of a deed of 17 & 22.

('G') The mortgage deed recites that the loan of Rs 2000/- due under it was incurred for the purpose of discharging the debt due under a mortgage decree obtained in the Kolar Munsiff's Court by Shinarao and Ramiah's father and which decree appears to have been under execution. If these recitals ~~stand~~ are true, then it is

('H') not shown in the plaint how the alienation can be said ~~for~~ to be not for legal necessity. The term "necessity" implies pressure & the fact that execution was taken out shows that there was "pressure". If the decree was one such as could be binding on the Court, legal necessity would be easily established, & there is no information available ~~that~~ to decide the question whether the decree was one binding or not -

Note—Contn. Sheet

WD 01684—GPB—30,000—20 1-29

Serial No.

of the difficulties in establishing such allegations especially in view of the meagre evidence available for the purpose -

26 - Considering each plaint by itself, the facts are as follows: —.

Suit No: 1

'F' The mortgage that is sought to be set aside is that created by a deed of 20th april 1916 in favour of Ramiah and Shambhoga Ramamantarao and assigned by them in favour of the proposed defendants- 'G' 1 and 2 by means of a deed of 17 & 22.

The mortgage deed recites that the loan of Rs 20000/- due under it was incurred for the purpose of discharging the debt due under a mortgage decree obtained in the Kolar Munsiff's Court by Shinakas and Ramiah's father and which decree appears to have been under execution - If these recitals ~~state so~~ are true, then it is 'H' not shown in the plaint how the alienation can be said ~~for~~ to be not for legal necessity. The term "necessity" implies pressure & the fact that execution was taken out shows that there was "pressure". If the decree was one such as could be binding on the Court, legal necessity would be easily established, & there is no information available ~~the~~ to decide the question whether the decree was one binding or not -

2

Note—Contn. Sheet

WD 01684—GPB—30,000—20-1-29

General and Revenue Secretariat | File No. of 193

Serial No.

Suit No: 2.

'J' This is to set aside a mortgage for Rs 1500/- dated 7-9-1908, in favour of Kandi Subbu. It is recited in the deed that the loan was incurred to discharge a debt of Rs 950/- due under a deed of 2-11-07 which was to keep up the Government Kandayam. Rs 550/- appears to have been received by the Swami on the date of the mortgage, for expenses. ~~The~~ It is not at all shown in the plaint how the mortgage so far as Rs 950/- is concerned can be said to be not binding on the present Swami. A Shebait is entitled to mortgage the endowed property to prevent its forfeiture or sale for non payment of land revenue or other paramount charge (25 All 296 & 40 Mad 709 P.C).

'g'

3)

Suit No: 3.

'K' This is to set aside three mortgages, two of them dated 29-7-1910 & the

'M' Third 11.8.1910. Again the recitals in these

'N' deeds show that the loans were incurred to pay off Govt Kandayam.

Suit No: 4.

'O' is to avoid the mortgage in favour of Ramiah, dated 1-2-1908. This

Note—Contn. Sheet

WD 02328—GPB—10,000—22-4-30

File No of 192 General

Serial No 5

deed is not to be found on the records. There is a document dated 27.12.1907 which hypothecates the properties mentioned in this draft plaint - If this is the said document the date 1.2.1908 mentioned in the plaint is wrong -

The recital in the deed of 27.12.07 shows that the debt of Rs 5000 was for expenses & discharge of Kandayam.

'V'

Suit No: 5

This is to cancel the sale deed of 1-7-1914 in favour of Arsha Krishna. There is no copy of the deed sued. The draft plaint contains ~~the~~ same general allegations as are to be found in the other cases -

'U'

2) The Advocate who has drafted these plaints (Mr G.R. Srinivasadas of Salem) seems to think that as the mismanagement of the suit properties by the previous Swamis is a matter of public knowledge, ~~the~~ burden of proving legal necessity rests very heavily on the alienees - As stated in the note of 11th January 1930, it is no doubt true that the initial

Serial No.

181
Law

burden is on the aliences concerned. But if there ~~is~~ sufficient evidence to prove the truth of the recitals mentioned above ~~a Case~~ legal necessity ~~does~~ could be easily proved by the defendants or atleast they can shift the burden on to the plaintiff by making out a prima facie case—

28 It may not be desirable to institute Suits to cancel old alienations Saully depending on the defendants ~~inability~~ probable inability to prove legal necessity A thorough investigation as to the purposes for which the particular alienations were really made appears to be necessary before ~~it~~ they can be said to be not binding on the Estate. There may be general mismanagement but the particular alienations in dispute may be legally binding on the Estate.

Legal R^r MM 23.9.30.

29 I am afraid the counsel engaged is not the proper person to hand to such cases. In fact, his work is thrown on this office. No O.C. can be may be kindly requested to engage the services of the best man in the board Bar

Note—Contn. Sheet

WD 02328—GPB—10,000—22-4-30

Mysore File No 201 of 1929

General and Revenue Secretariat

OFFICE OF THE FIRST MEMBER OF COUNCIL
22 OCT. 1930
No. 4032

Serial No.

GIAL SECRETA...
SEP 1...

Law

357/26

P required to carefully prepare plaints in MC cases. No plaints now sent cannot be approved

P 21.10.30

Directly with Comps

30 If approved the file may be sent up to the M C, so that he may issue necessary instructions to the DC for the preparation of the plaints in the light of the above legal opinion

[illegible] 17.10.30

VS 21.10.30

31 Yes

CRS 25/10 P 27/10

G.O. in 27/30-31
Trichy case.

32 Forwarded G.O. to the Muzaraai Commissioner with Compliments for favor of needful action and Kind return.

By Order,
V Subrahmanyeswara
For H Secy to Govt

29 10 30

1226 MR 24 25
29. OCT. 1930

Note—Cont'd Sheet

General and Revenue Secretariat | Misc. File No. 201 of 1930

Serial No.

1226
24-5.

33 Returned with compliments to the Secretary to Govt., Financial Department.

34 Further action in connection with the legal opinion has been taken separately.

35 The file of Govt. papers dealt with the letter of the 21st May 1930 has been detached and sent to the Dy. Comrs.

Bangalore
12.11.30

R. Narasimha Murthy
for Muzrai Commissioner.
(absent from H.Q. 2nd)

36 The file may if approved, be closed now and fresh action taken on receipt of fresh plaints for approval

R.N.M.K
18/4/30.

37 Yes
20.11.30

B
20 11-30

Note—Contn. Sheet

WD 02328—GPB—10,000—22-4-30

File No .of 192

General and Revenue Secretariat

Serial No.	Note–Contn. Sheet

No. J.1226/24-25 Ex 2 file

GENL & REV SECRETARIAT 8 JAN 1930 1070 MUZRAI

OFFICE OF THE REVENUE COMMISSIONER IN MYSORE,

Dated, Bangalore 2nd January 1930.

FROM Rajakarya Pravina
P.J. D'Souza, Esq., B.A., B T -
Muzrai ~~Revenue~~ *Commissioner*

IMMEDIATE.

To
REVENUE SECRETARIAL
7 JAN. 1930
8529
Financial
The Chief Secretary to the Government
of His Highness the Maharaja of Mysore,
Bangalore.

SIR,

With reference to correspondence ending with Government Order No.2529-30/Muz. 42-28-4 dated 18th May 1929 in the matter of redeeming some of the properties alienated by the late Swamigalu of the Sri Avani Matha, I have the honour to submit herewith copy of letter No.A.2-J.1463/27-28 dated 28th December 1929 together with its enclosure received from the Deputy Commissioner, Kolar District, stating that the parties have proved refractory and that it is not possible to secure the restoration of the properties except by filing civil suits and requesting that the draft prepared by Mr. G.K. Srinivasa Rao, Advocate, Kolar, may be returned with approval in consultation with the Legal Remembrancer.

2. The note prepared by the Sub Division Officer, a copy of which is herewith sent, gives a brief description of the properties in respect of which suits are proposed to be instituted and also the circumstances under which they were encumbered by the late Swamigalu. I request that the Legal Remembrancer may be kindly consulted and instructions issued in the matter of filing the suits. As immediate action has to be taken, arrangements may be kindly made to issue the necessary instructions by the 15th January.

I have the honour to be,

Sir,

Your most obedient servant,

R.N. Narasimha Raghavachar
Assistant Commissioner
for Muzrai Commissioner.
(Absent from station)

To

The Muzrai Commissioner in Mysore.

1428
" "
Zoie.

16/1/30

Sir,

Adverting to correspondence ending with your letter No. C.1226/24-25 dated 7-1-1930 requesting instructions for filing suits in ~~xx~~ respect of certain properties alienated by the late Swamigalu of Sri Avani Mutt, I am directed ~~to state as follows:-~~

Memo accompanying letter No. 8

1. Five suits are proposed to be filed and draft plaints prepared by Mr. G.R. Srinivasa, Rao, Advocate of Kolar are sent for ~~the~~ his opinion ~~of L.R.~~

Request you to furnish further information on the points detailed in the accompanying memo. Memorandum and draft plaints also sent herewith. I thank you and remain
16/1/30

2. It is said in ~~your~~ the letter under reply that the S.D.O's note gives the necessary details about the properties and the encumbrances But on a comparison of the schedules of the drafts plaints and this note, it is seen that it is only in suits 1 and 4 against Srinivasa Iyengar and P. Ramiah respectively, that some details are furnished. As regards the other three suits, no information is available as to how the alienations can be challenged as being void beyond the life-time of the Mathadhipati. Under the Privy Council Ruling Balusami Iyer's case (44 Madras), it is only such alienations of a Mathadhipati that are made for no "legal necessity" that can be avoided by his successor It is therefore essential to ~~avoid~~ know under what circumstances the mortgage and ~~xx~~ sale in question were made by the late Swami. The recitals in the documents executed have to be carefully examined and investigation has to be

made

made what other evidence is available to prove or disprove the recitals of legal necessity.

5. In the first proposed suit against Srinivasa Iyengar and Ramakrishna Rao, S.D.O's note shows that the lands were mortgaged on 20-4-1916 in consideration of the settlement of a decree for Rs. 2000/- It is not clear how the allegation in the 1st suit attempts to go behind the decree

6. Except in the 5th suit against Anche Subbiah in all the remaining four, the alienations that are sought to be avoided are mortgage ~~free from encumbrances.~~ It is perhaps better if an alternative relief for redemption of the mortgages is also asked for.

The relief prayed for in all is on the pleadings

~~I am to observe that~~ The question of legal necessity is of great importance on the decision of which the cases will depend. ~~I am accordingly to request you to send up~~ certified copies of all the documents available and ~~also to furnish~~ shall be sent full information on all the points required under Rule 78 of the Rules for the legal affairs of Government, Note furnished.

The enclosures are returned for reference and resubmission.

I have &c.,

Final. Secy. to Govt

C.R.G.

16/7

M E M O .

to accompany letter No. dated

1. Five suits are proposed to be filed and draft plaints prepared by Mr. G.R. Srinivasa Rao, Advocate of Kolar are sent for legal opinion.

2. It is said in the letter under reply that the Sub-Division Officer's note gives the necessary details about the properties and the encumbrances. But on a comparison of the schedules of the drafts plaints and this note, it is seen that it is only in suits 1 and 4 against Srinivasa Iyengar and P. Ramiah respectively, that some details are furnished. As regards the other three suits, no information is available as to how the alienations can be challenged as being void beyond the life-time of the Mathadhipathi. Under the Privy Council Ruling Balusami Iyer's case (44 Madras), it is only such alienations of a Mathadhipathi that are made for no "legal necessity" that can be avoided by his successor. It is therefore essential to know under what circumstances the mortgages and sale in question were made by the late Swami. The recitals in the documents executed have to be carefully examined and investigation has to be made as to what other evidence is available to prove or disprove the recitals of legal necessity.

3. In the first proposed suit against Srinivasa Iyengar and Rama Krishna Rao, Sub-Division Officer's note shows that the lands were mortgaged on 20th April 1916 in consideration of the settlement of a decree for Rs. 2000/-. It is not clear how the allegations in the 1st suit attempts to go behind the decree referred to therein.

4. Except in the 5th suit against Anche Subaiah in all the remaining four, the alienations that are sought to be avoided are mortgage. The relief prayed in all is one for possession free from encumbrances. It is perhaps better if an alternative relief for redemption of the mortgages is also asked for.

The

The question of legal necessity is of great importance on the decision of which the cases will depend. Certified copies of all the available documents should be sent and full information on all the points required under Rule 78 of the Rules for the legal affairs of Government should be furnished.

.....

Secretary to Government,
Financial Department.

J.R.G.3.

M E M O .

to accompany letter No. dated

1. Five suits are proposed to be filed and draft plaints prepared by Mr. G.R. Srinivasa Rao, Advocate of Kolar are sent for legal opinion.

2. It is said in the letter under reply that the Sub-Division Officer's note gives the necessary details about the properties and the encumbrances. But on a comparison of the schedules of the drafts plaints and this note, it is seen that it is only in suits 1 and 4 against Srinivasa Iyengar and P. Ramiah respectively, that some details are furnished. As regards the other three suits, no information is available as to how the alienations can be challenged as being void beyond the life-time of the Mathadhipathi. Under the Privy Council Ruling Balusami Iyer's case (44 Madras), it is only such alienations of a Mathadhipathi that are made for no "legal necessity" that can be avoided by his successor. It is therefore essential to know under what circumstances the mortgages and sale in question were made by the late Swami. The recitals in the documents executed have to be carefully examined and investigation has to be made as to what other evidence is available to prove or disprove the recitals of legal necessity.

5. In the first proposed suit against Srinivasa Iyengar and Rama Krishna Rao, Sub-Division Officer's note shows that the lands were mortgaged on 20th April 1916 in consideration of the settlement of a decree for Rs. 2000/-. It is not clear how the allegations in the 1st suit attempts to go behind the decree referred to therein.

6. Except in the 5th suit against Anche Subbiah in all the remaining four, the alienations that are sought to be avoided are mortgage. The relief prayed in all is one for possession free from encumbrances. It is perhaps better if an alternative relief for redemption of the mortgages is also asked for.

The

The question of legal necessity is of great importance on the decision of which the cases will depend. Certified copies of all the available documents should be sent and full information on all the points required under Rule 78 of the Rules for the legal affairs of Government should be furnished.

.....

Secretary to Government,
Financial Department.

D.R.C.3.

12210 2 FEB.
24.55
nc. one file with 8 copies
17 documents etc.

21

GENL. [illegible] SECTT.
22 FEB 1930
1342
MUZRAI.

To

[illegible]

To

[illegible]

Muz 201-21-3

Immediate
22/2

Sir,

With reference to the letter No. [illegible] / S.301-9-3 dated 16th January 1930 re. filing writs in respect of certain properties alienated by the late [illegible] of the Vilvahi Pattu, I have the honour to forward herewith copy of letter No. [illegible].16 1/28-29 dated the 14th February 30 together with its enclosures received from the Deputy Commissioner of the Kalpar District furnishing further information on the points detailed in the memo sent with your letter under reply - and to solicit the favour of early orders in the matter.

I have the honor to be,

Sir,

Your most obedient servant,

Muzrai Commissioner.

V.S.K.
20/2

Letter No. . .13 / - [illegible]
Dem[illegible]

Subject:- [illegible]

[illegible] to No. .1 / - [illegible] 1 0, [illegible] sion [illegible] letter No. .1. .317/ - [illegible] also [illegible].

In [illegible] Dutt, [illegible] sant [illegible] our or to [illegible] ding this course as [illegible] may be [illegible].

The enclosures received [illegible] 3 copies of documents [illegible].

Yours [illegible]

[signature]

for Luzrat Commissioner,

V.S. .
20/2

Appendix F G—1

SUBJECT.....

.....

.....

Section Income Tax

File No. 201-27

Serial No.

No. 2043/Revenue

Diary No. of letter replied to.....13612

General and Revenue Secretariat

(Income Tax)

the *192*

To

The Income Tax Commissioner

Bangalore

Date of issue.....5/6/30.....

Signed by.....M. T. K. S. Ayyar.....

Sir,

With reference to the correspondence ending with your letter No 12 26/24-25 dated the 20th/21st February 1930 furnishing certain information about the filing of Returns for the assessment of the

List of enclosures.....

Copied by.....

Examined by.....

over

WD 063—GPB—20,000—1-8-29

I enclose herewith
a letter dated the
Secretary to the
Lieutenant Governor
I am directed to
request you to
do so etc. to furnish
and the details required
under Rule 668
of the Rules for the Con
duct of legal affairs
in Government issued
as G.O. No 4966-50 dated
Calcutta the 1st March 1924
2. The record, accompa
nied with your letter are, as
noted, sent herewith for
reference etc.

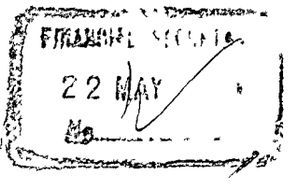
I have &c

for Secretary to Govt
of
4/4/24

M. C. 13]

OFFICE OF THE MUZRAI COMMISSIONER IN MYSORE,

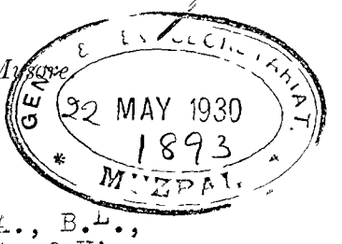
Bangalore, 20th May ..... 1930.
21



No. 1226 Encl
24-5.

FROM

Rajakaryapravina
P. G. D'SOUZA, ESQ., B.A., B.L.,
Muzrai Commissioner in Mysore.



TO

Rajasevaparayana
B. Srinivasa Iyengar, Esq., B.A., B.L.,
Secretary to the Government of His
Highness the Maharaja of Mysore,
Financial Department.

Moz 201-29-5

SIR,

With reference to your letter No.2043 Luz.201-27 dated -- 5th April 1930 calling upon me to furnish all the details, required under rules 66 and 78 of the Rules for the conduct of legal affairs of Government contained in G.O.No.P.4966-5045/Cts.76-23-1 dated -- 19th March 1924, in the matter of the filing of suits for the -- recovery of certain properties alienated by the late Swamigalu of the Sri Avani Mutt, I have the honor to forward herewith copy of Kolar Deputy Commissioner's letter No.A2-C.1698/28-29 dated 9th May 1930 containing the required information and to request that the Legal Remembrancer may be kindly consulted and further ----- instructions issued at an early date so as to enable the Deputy Commissioner to file the suits early. The copies of documents are enclosed in the connected record.

I have the honor to be,

Sir,

Your most obedient servant,

Narasinga Rao
For Muzrai Commissioner.
Absent from station
on

the alienations would not be binding on the successor to the -- Peeta. Hence suits could be filed to recover the properties.

5. At this stage it is not possible to send any copies of written statements or pleas advanced by the defendants as required under clauses e, f and d of Rule 78. They will be sent for perusal after suits have been filed and pleas put forward by the defendants. When once we establish that the properties were those of the mutt and the Swami for the time being had no absolute rights of disposal over them, the burden of proving the necessity for the alienations at the time, and their binding nature on the successor to the Peeta is upon the defendants and in my opinion, they may not be able to furnish adequate proof therefor.

6. Under these circumstances I request you to kindly obtain the approval of the Legal Remembrancer to the laints, so as to enable me to file the suits early.

The connected records accompany.

"C o p y"

Yecarasuiga Rau

For Muzrai Commissioner.

Letter No.A2 C.1698/28-29 dated 9th May 1930 from the Deputy Commissioner, Kolar District to the Muzrai Commissioner in Mysore.

Subject:- Sri Avani Mutt properties-Redemption of-Filing suits for-

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With reference to your Memo No.C.1226/24-25 dated 12-4-1930 calling for details required under Rules 66 and 78 of the Rules for the conduct of legal affairs of Government issued as per - Government order No.P.4966-5045/Cts. 76-23-1 dated the 10/19th March 1924 on the above subject, I have the honor to state as follows:-

2. The facts of the case re: the alienations by the late --- Swamigalu of Sri Avani Mutt of the Mutt properties have been fully set out in plaints already sent. The copies of documents are -- to be found in the enclosed record. It is now sought to secure back the alienated properties to the Mutt on the ground that the alienations by the late Swamigalu were not in the interests of the Mutt and for legal necessity-and in any case cannot be binding on the successor to the peeta. As suits will have to be filed in th Kolar Munsiff's Court, the plaints prepared by the counsel have been sent for the formal approval of the Legal Remembrancer re: the wording of the plaints and also the cause of action as set out therein under Rule 66 of the conduct of legal affairs of Government.

3. My letter No.A2.C.1463/27-28 dated 18th December 1929 -- together with the correspondence ending with the Kolar Sub Divisi Officer's letter No.Rl.C.317/28-29 dated 9-3-29 clearly shows the necessity for the institution of the various suits for the recover of the Mutt properties.

4. From the enclosed plaints, copies of documents and xxxx correspondence, it is clear that suits could be filed for the -- recovery of the Mutt properties alienated by the late Swamigalu - without necessity as the Mutt had a good income to meet all the legitimate expenses of the institution and as the Swamigalu for t time being was only a Manager of the institution, he had no --- absolute rights of disposal over the properties and in any case

Subject:- Avani Mutt draft plaint

As required in the Puzrai Commissioner's me. o, copies of document as per Schedule attached, are submitted for kind perusal. I consulted Mr. G.R.Sreenivasa Rao (Counsel) who prepared the draft plaints. He stated that as mismanagement of the Mutt properties by the previous Swamigalu was a matter of public knowledge and was within the cognisance of Government as evidenced by voluminous recor the burden of proving legal necessity in the case of alienations lik the present rested on the alinees and the presumption was in favour of the present Swamigalu.

2. Regarding the reliefs claimed there will be no harm in asking for the alternative of redemption in the case of the mortgaged properties. But if the mortgage amounts are paid, the mortgagees will be prepared to give back the lands without the reference to a Civil Court. When it was reported in my letter of the 18th December '29 that it is not possible to secure the restoration of mortgaged properties except by filing suits it was meant that advantageous terms were not available and that the mortgagees demanded full satisfaction.

3. Detailed information regarding certain of the suit properties is given in my letter No. K.1.C. 317/28-29 dated 9-3-29.

Sd/- K.G.Dutt,
Assistant Commissioner,
Kolar Sub Division.

Copy

for Deputy Commissioner
Kolar District

Letter No. R.L.C. 317/28-29 dated Kolar 9th March 1929 from the Assistant Commissioner, Kolar Sub Division, Kolar, to the Deputy Commissioner, Kolar.

Subject:- Avani Mutt - Redemption of properties.

In continuation of my previous letter on the subject, I have the honour to submit the following report of further enquiries made and of action taken.

2. S.No.6 of Badakanahalli dry and wet 4 acres 17 guntas in extent is Devadaya Inam endowed to the Avani Mutt in the Kolar Taluk. The Quit rent is Rs.1-12-0. It was leased out on 1-5-15 by the previous Swamigalu to Torlakki Patel Muneppa and one Husein Sab for an annual rent of Rs. 6/-. Muneppa gave a statement before me on 11-2-29 agreeing to pay an enhanced rent of Rs. 10/- , Husein Sab had been given a notice to appear but has not done so yet. Another date i.e., 15th instant has been given.

A tamarind tree belonging to the Mutt near Ammarkunte village in the Srinivasapur Taluk had been leased out locally to the Shanbogue of the Village for Re. 1/- annually. I have obtained a mutchalika for Rs. 5/- annually from the Shanbogue with effect from the current year.

4. The following lands under Avani Dodkere i.e., S.Nos:-

69	wet	3a. 11g.	Assmt. Rs.20)	were mortgaged with possession
74	"	3a 34g.	Rs.21.)	
78	"	3a. 28g	Rs.21)	by the previous Swamigalu to

Mandi Subbaiya Naidu by Registered document No.345 dated 31-10-00 for Rs. 1,500/-. Mr. Subbaiya was examined by me and his statement as well as copy of the document is enclosed. He desires to be paid back the amount together with Rs. 180/- tank contribution paid by him in 1912.

5. The following S.Nos. under Avani Dodkere were mortgaged to Badruddin Sab of Chitteri as mentioned hereafter:-

S.No.			A.	G.			
S.No.	94/2	Wet.	0	21	Rs.2-8.)		
	95	"	4	2	21.	)Document No.135)	Registered on
	96.	"	3	6	~~19/-~~)	for Rs 1000/-)	15-8-10.
	97.	"	4	17	24-12)		
	105	"	0	15	2-4		
	111	"	1	0	5-8	No.136 for Rs. 100/-	-do-
	97	"					
	97	"	0	38	5-4	No. 137 -do-	-do-

Mr. Abdul Hamid Sab son of Badruddin Sab, deceased, gave a statem before me which is enclosed for perusal together with copies of docu -ments. He desires to be paid back the sum of Rs. 1,200/- as above together with a sum of Rs. 134 odd paid as tank contribution and -- compensation for improvements said to be worth about Rs. 400/-.

6. The following S.Nos. of Ramenallur Village have had this histo S.No. 9 wet and garden 2 acres 17 guntas assessed at Rs. 18/- was bought in a Civil Court sale in 1910-11 by one Venkatacami who sold it in 1913 for Rs. 400/- to Karhalli Muneppa of Battlabavanahalli village and Makkappa jointly and is now in their possession. S.No. 1 wet is 1 acre 11 guntas assessed at Rs. 7/0/0 was obtained in Civil Court sale in '10-11 by the abovesaid Karhalli Muneppa and was sold by him in November 1913 to Kempanna and Venkatarama Setti for Rs. 150/- S.Nos. 20,21& 40 were mortgaged with possession by the Swamigalu on 4-8-'09 for Rs. 60/- by an unregistered document. The extent of these S.Nos. is about 2 acres and the assessment Rs. 12/-. The sta -rent of Karhalli Muneppa to the effect that he is agreeable to restore the lands in his possession for the amounts paid by him is enclosed for information.

7. S.No.20 of Bandihalli village is in the possession of Yaleppa of Urkunte Mattur. His statement was recorded by me and is enclos for perusal. His contention is that the S.No. extent 5 acres 20 assessed at ~~xxxxxxxx~~ Rs. 25/- has been all along in his possession the khate being nominally in the Mutt"s name. He was paying Rs. 5/ to the Mutt annually but he paid Rs. 275/- to the Swamigalu and got full rights in the land by registered agreement dated 17-3-15 (No.6 He says he has spent large sums on the land and is not willing to restore it.

8. I solicit the favour of instructions as to the further action to be taken in the various cases about which I have made reports from time to time.

" C O P Y "

For Deputy Commissioner,
Kolar District.

Memo.

To accompany letter No. dated

1. Five suits are proposed to be filed and draft plaints prepared by Mr.G.R.Srinivasa Rao, Advocate of Kolar are sent for legal opinion.

2. It is said in the letter under reply that the S.D.Officer's note gives the necessary details about the properties and the encumbrances. But on a comparison of the schedules of the drafts plaints and this note, it is seen that it is only in suits 1 and 4 against Srinivasa Iyengar and P. Ramiah respectively that some details are furnished. As regards the other three suits no information is available as to how the alienations can be challenged as being void beyond the life-time of the Mathadhipathi, Under the Privy Council Ruling Balusami Iyer's case(44 Madras), it is only such alienations of a Mathadhipathi that are made for no "legal necessity" that can be avoided by his successor. It is therefore essential to know under what circumstances the mortgages and sale in question were made by the late Swami. The recitals in the documents executed have to be carefully examined and investigation has to be made as to what other evidence is available to prove or disprove the recitals of legal necessity.

5. In the first proposed suit against Srinivasa Iyengar and Rama Krishna Rao, Sub-Division Officer's note shows that the lands were mortgaged on 20th April 1910 in consideration of the settlement of a decree for Rs.2000/-. It is not clear how the allegations in the 1st suit attempts to go behind the decree referred to therein.

6. Except in the 5th suit against Anche Subbiah in all the remaining four, the alienations that are sought to be avoided are mortgages. The relief prayed in all is one for possession free from encumbrances. It is perhaps better if an alternative relief for redemption of the mortgages is also asked for.

The question of legal necessity is of great importance, on the decision of which the cases will depend. Certified copies of all the available documents should be sent and full information on all the points required under Rule73 of the Rules for the legal affairs of Government should be furnished.

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Sd/-T.N.Someswara Iyer.
For Secretary to Government,
Financial Department.

Copy
Ramachandra
for Ruzrad Comm

Letter No.A.2-C.1463/27-28 dated 18th December 1929, from the Deputy Commissioner, Kolar District, to the Muzrai Commissioner in Mysore.

With reference to your D.O. letter No.C.1226/24-25 dated 31st August 1928, re the redemption of alienated properties of the Sri Avani Mutt, I have the honour to state that the parties have proved refractory and that it is not possible to secure the restoration of the properties to the institution except by filing civil suits. Draft plaints have therefore been got prepared in the marginally noted cases and are sent herewith together with a copy of the explanatory letter from the Counsel to the Assistant Commissioner, Kolar. I request you to be so good as to return them early with your approval in consultation with the Legal Remembrancer to Government.

x

x

Swamy	-vs -	Srinivasa Iyengar.
"	-Vs-	Mandi Subbiah.
"	-Vs-	Abdul Hameed Sab.
"	-Vs-	Peddanna Ramiah.
"	-Vs-	Anche Subbiah.

" C o p y "

For Muzrai Commissioner.

BR.

N o t e.

Survey numbers 1, 22, 23, 25, 26, 30, 32, and 33 of Avani village with an extent of 23 acres and 25 guntas bearing an assessment of Rs.101/- are in the possession of Messrs. Srinivasiengar and Ramakrishna Rao.

These lands had been mortgaged with possession by the late Swami on 20th April 1916 to Peddannavara Ramaiya and Shanbhogue Hanumanta Rao in consideration of the settlement of a Decree for Rs.2,000/- held by the said Ramaiya's father and one Bhima Rao. On 17th August 1922 this mortgage was transferred to the present holders by Ramaiya and Hanumanta Rao for the same amount. Messrs. Srinivasiengar and Ramakrishna Rao claim to have paid Rs.100/- more towards contribution and Land Revenue arrears due on the lands. They are prepared to restore the lands on receipt of the amount invested by them at the end of the month of Jyestha in any year in accordance with the terms of the deed. Mr. Srinivasiengar was present before me on the 20th September 1928.

* * * * * *

II. Survey numbers 144 and 145 of Avani village with an extent of 6 acres and 20 guntas assessed at Rs.36/- are in the possession and enjoyment of Peddannavara Ramaiya. They were mortgaged to him by the late Swami as per deed registered on 1st February '08 for Rs.500/-. He subsequently paid a sum of Rs.126/- towards contribution dues and holds an unregistered bond for the same dated 3rd June 1913. Ramaiya is willing to release the lands if the sum of Rs.627/- is paid to him. In the alternative he is willing to buy the full title of the lands for an additional sum of Rs.1,000/-. He appeared before me this day (27th September 1928) with both documents.

The following survey numbers of Cholangunte village are in the possession of Mr. Nageswara Iyer Survey Nos.81/2, 87/2, 25/1, 24, 13, 28, 102, 43, 51, 53, 54, 66, 61, 62, 81/1, 64/1, 87/1, 84, 70, 78, 88, and the Mutt's share is S.Nos.50, 63, 100. The total extent is 85 acres 18 guntas assessed at Rs.322-12-0. Their history is as follows:--

In O.S. 14 of '09 the District Munsiff of Vellore gave a

decree for Rs.800/- in favour of one Mr. N. Krishmachari against the Mutt. This was ~~xxxxxx~~ assigned to one Mr. Gopala Rao who applied for execution to the Munsiff, Kolar. This appears to have been contested by the Swami but to have been ruled out. Execution No.153 of 1911-12. These properties were brought to sale by the Court on 4th January 1912 wherein they were bought for Rs.400/- by the decree holder subject to mortgages subsisting. A copy of the sale certificate dated the 23rd January 1913 is filed.

Mr. V. Nageswara Iyer purchased Gopala Rao's right for Rs.1,000/- by registered sale deed on 30th March 1913.

Those lands under the Cholangunte tank had been mortgaged on 3rd May 1909 with possession to Srinivasa Sastri and his brothers for Rs.1,000/- and were redeemed by Mr. Nag-swara Iyer on 12th July 1914, and possession got. Those of the lands as were under the Ramasandra tank had been mortgaged with possession on 3rd May 1909 for Rs.500/- to one Ramaiya son of Rangappa, who assigned them to one K. Parameswara Iyer, Assistant Master, Maharani's College, Mysore on 12th September 1909, who in his turn assigned them on 24th July 1916 by registered deed to K. Ramachandra Iyer grandson of Mr. Nageswara Iyer. S.Nos. 81/2 and 87/2 were sold to Anche Subba Iyer brother of Mr. Nageswara Iyer by the Swami by unregistered sale deed dated 1st September 1914 for Rs.90/-.

Mr. Nageswara Iyer showed me his documents on 20th September 1928 and promised to file a statement of his representations on 27th September 1928. He has now asked for time till the 5th October which has been granted.

(Sd). K. GURU DUTT.

Assistant Commissioner,
Malur Sub Division.

" C o p y "

For Muzrai Commissioner.

BR.

G.R. Srinivasa Rao, B...,B.L.,
Advocate, Kolar.

Kolar.
26-11-26.

36

The Sub Division Officer,
Kolar Division, Kolar.

Sir,

As per instructions given to me, I have prepared draft plaints - in the marginally noted cases and enclose them for being sent to the - Deputy Commissioner for approval.

1. Swami Vs. Srinivasa Iyengar
2. --do-- Nandi Subbaiah.
3. --do-- Abdul Haneed Sab.
4. --do-- Pedda Ramaiah.
5. --do-- Anche Subbaiah.

2. I have considered over the matter - as to who should be made plaintiff. As the Government Order is not very clear in authorising the Deputy Commissioner to - file suits and conduct cases, and before the cases are finally decided - by all the Courts, if the Government were to hand over the management - of the Mutt affairs to the present Swami, to avoid techenical difficulties and lasts, as the case law is clear on the point that the alienations - are not finding on the Successior to the "PIETA," ~~Mutt under the~~ - - - ~~Government Management~~. I have made Swami himself the plaintiff, but - under the Government Management for the time being, representative - - Deputy Commissioner.,

3. As regards the working used by ~~me~~ me in Para 4 of the plaint these are the words used by the - - Muzrai ~~Commissioner~~ Secretary in his letter to the late Swami (Muzrai Secretary letter to Swami Muz.No.3035 F.42-1903 dated 7-4-1904).

4. As regards the defendants, I ~~have~~ have thought fit to add - as defandments not only the alenies of the property from the late Swami, but the ryots actually cultvating the lands, so that we may hear their - objections if any, and have the decree binding on a l persons, especially we ask for the possession of the lands together with ~~mesne~~ profits from this year. When we have all the ryots as defandments we can even have a ~~successior~~ receiver appointed during the pendency of the suits.

5. After the drafts are approved, we shall get them ~~passed~~ as many copies have to be got.

6. If you were to get them approved early we can file the suits - before this year harvest season both the paddy crop may not be taken - away by the alenies.

I have, etc.,

Sd/ G.R. Srinivasa Rao,

Copy by Mail
11-12-26. S.D.O